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Cal/EPA




- Department of Pesticide Regulation Enforcement Branch
- Investigative Techniques Training

Monday, October 23, 1995

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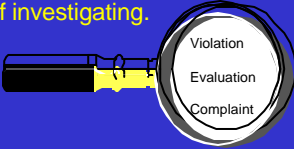
Purpose of this training.

- To help you understand the
- Process.
- Thinking involved.
- Planning needed.
- Resources available
- Evidence to gather.
- Report components.



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Purpose of investigating.



- To determine what happened.
- To determine if there was a violation.
- To assist DPR in the evaluation of pesticide safety.
- To respond to complaints.

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You are notified of an episode. What Next?

- Initial questions to ask
  - Is anyone still at risk?
  - What should I do to protect them?
  - Is it pesticide related?
  - Is it in my jurisdiction?
- Do I have the authority to investigate?
- What type of episode is it?
- Is it within policy to pursue further?
- What resources are needed?

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W2-2

Is it pesticide related?



- What is a pesticide?
- If it has an EPA registration number it is a pesticide.
- Defined in CFAC § 12753

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W2-3  
M2

What Is a Pesticide?

- Spray adjuvant
- Substances intended to be used for –
  - Defoliation,
  - Plant growth regulation,
  - Preventing, destroying, repelling or mitigating any pest
    - which may infest or be detrimental to vegetation, man, animals or households

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W3-5  
M6

## When Is an Unregistered Product a Pesticide?


- Intended to be used
  - 3CCR § 6145
- Unlawful to possess use an unregistered pesticide
  - CFAC § 12995
- Unregistered Products
  - 3CCR § 6301
- Exempted pesticide products
  - 3CCR § 6147

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W2-4  
M4

## What is a pest?


- Insect
- Predatory animal
- Rodent
- Nematode
- Weed
- Any form of terrestrial, aquatic, or aerial -
  - Plant or animal
  - Microorganisms
  - Except those on or in living man or animals
- CFAC § 12754.5



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W3-5  
M6

## Is it in your jurisdiction?




- Ag. Comm. investigates use-related pesticide episodes.
- DPR conducts pesticide product quality investigations.
- DPR and Ag. Comms investigate residues on produce.
- CAL OSHA has jurisdiction over non-use-related pesticide episodes.

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W3-6 & 15  
M7-9

## Do I have the authority to investigate?



- You may enter any premises to inspect - Any plant, appliance or thing on the premises. CFAC § 11456(b) also see 3CCR § 6140.
- Commissioners can inspect and investigate pesticide use by structural PCO's B&PC § 8616.5 and § 8616.7
- Language on the permit allows you entry.
- These are very broad powers to be used with tact and discretion.

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W3-6  
M10-12

## Further Authority.




- Enforce Div. 6 & regulations pursuant to it. CFAC § 11501.5
- Agricultural Civil Penalties. CFAC § 2999.5
- Structural Civil Penalties. B&PC § 8617
- Cease & Desist Order-Comm CFAC § 11897
- Cease & Desist Order-Dir CFAC § 11896

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W3-6  
M10-12

## Still more authority



- Stop Harvest Order.
- Pre-harvest interval. CFAC § 12672
- Excess residue. CFAC § 12673
- Prohibit worker entry if unsafe. 3CCR § 6706
- Produce seizure. CFAC § 12601

## DPR Policy

- DPR's policy is to conduct investigations of ALL complaints which come to the attention of DPR or the Commissioner alleging misuse of pesticides or pesticide damage or injury to crops, property, human or animal health, or the environment.
- Commissioner's Office is the lead investigative agency in consultation with DPR.

## What Type of Episode is it?



- Human effects?
- Environmental effects?
- Economic loss?



- Special incidents?

## Priority if...



- Human effects
  - Death, including suicide
  - Serious illness requiring hospital admission as "in-patient"
  - Injury or illness involving 5 or more from a single pesticide episode

## Priority if...



- Environmental contamination
  - Water – drinking water supply of 10 households affected
  - Air – Evacuation or recommendation to evacuate 5 or more
  - Land – ½ acre or more not usable for intended use for 1 year or more

## Priority if...



- Animal mortality
  - Birds: 50 non-target
  - Fish: 500 non-target
  - Endangered or threatened species: 1
  - Domestic, game, other non-target: 5



## Priority if...

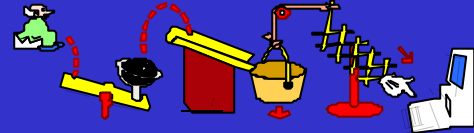
- Economic loss – Damage estimated at \$20,000 or 20% yield loss to:
  - Property
  - Equipment
  - Livestock (including bees)

## Priority if...

- Special incidents
  - Episodes occurring in Oregon, Nevada, Arizona, Mexico or tribal lands that have effects in California or vice-versa
  - Any accident involving application aircraft when
    - pesticide exposure caused accident
    - accident resulted in pesticide contamination

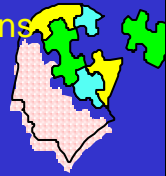
## Now you know...

- It is pesticide related
- You have the authority
- It is within policy
- The type of episode.
- You must - **CREATE A PLAN.**



## Five "W" Questions

- What happened?
- Where did it happen?
- When did it happen?
- Who did it?
- Why did it happen?



## What evidence and supporting documents are needed?

- Statements
- Records
- Samples
- Diagrams
- Photographs
- Your notes



## Statements and Interviews.

- ➔ First, interview those who will voluntarily give the most complete account for an early overall insight.
- Last, question hostile witnesses and suspects, taking the easiest suspects first. ➔

## Setting the Scene for the Interview

- Set subject at ease
- In private
- In comfort



W5-9 W6&7  
M16

## Three Phase Interview Method

- 1. Subject tells story.
- 2. Subject again tells story while inspector takes notes.
- 3. Inspector repeats the story to the subject.

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W8-10  
M18

## Records required by law - (1)

- RM Permit.
- Notice-of-Intent.
- Pesticide Use Report.
- Written Recommendation.

W8-11  
M18

## Records required by law - (2)

- Sales Invoice.
- Notice of Completion.
- Worker Safety Training Record.
- Application Specific Information.

W8-11  
M18

## Records kept in the normal course of business -

- Inventory control record.
- Work or Job Order.
- Weight ticket.
- Bill of Lading.
- Credit invoice.

W8-12  
M19

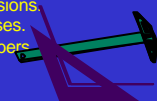
## Samples

- Diagram sampling area.
- Prevent cross contamination.
- Package and identify samples properly.
- Preserve the chain of custody.
- Evidence in safe keeping.

W8-13  
M20

## Diagrams


- Include in the diagram -
  - Episode site.
  - Treatment site.
  - Landmarks such as buildings and roads.
  - Crops and acreages.
  - Orientation and dimensions.
  - Location of the witnesses.
  - Sample sites and numbers.
  - Photograph sites.




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W8-14  
M20

## Photographs



- A picture is worth a thousand words.
- Add data to photographs including -
  - Date.
  - Where taken, "Looking north from the barn."
  - Photographer's ID.
  - What is shown, "Area of drift."




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M21

Your field notes have great value because they..

- Were made at the time of the inquiry.
- Record the actual words used by witnesses.
- Are the basis for the report or case file.




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W9-15 & 16  
M21

Now that you have gathered all the facts..

- Analyze them.




Make an hypothesis.  
If evidence substantiates hypothesis - accept hypothesis.  
If evidence partially substantiates hypothesis - modify hypothesis.  
If evidence contradicts hypothesis - reject hypothesis, and

- Form a new hypothesis.

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M22

Was there a violation?




- What was the violation?
- What section or sections were violated?
- Does the evidence support the violation?

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W10-17  
M22

## Code Sections

- Break CFAC §12973 into its elements




The use of any pesticide shall not conflict with labeling registered pursuant to this chapter which is delivered with the pesticide or with any additional limitations applicable to the conditions of any permit issued by the director or commissioner.

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W10-18  
M22

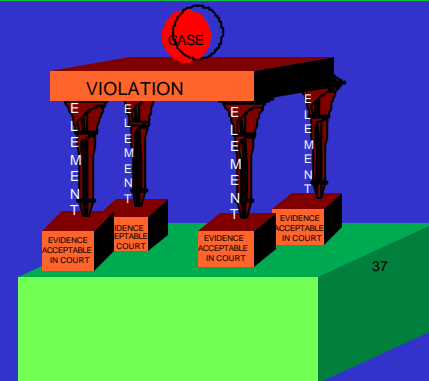
## It's Elementary, My Dear Watson.



- Use of a pesticide.
- The use was not allowed by the label on the product, at the time of the use.
- The label on the product was registered in California at the time of the use.
- The label at issue was the one the user received with the pesticide.
- If all these elements are satisfied then there is a violation.
- Source: Hearing Officer Sourcebook.

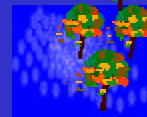
Elements to test if the act was in violation of a permit condition.

- Use of a pesticide.
- The use was prohibited by a permit in force at the time of the use.



Application of the elements to the case study.

- Is there evidence that the suspect used a pesticide?
- Was the use in conflict with the label?
- Was the label at issue the one delivered?
- Are all elements met?



Now that you have a case...



■ Write the report.

The report should include (1)

- Brief summary of the episode.
- Defendant data.
- Victim data.
- Witness data.
- Violations summary.



## The report should include (2)

- Code sections.
- Documents gathered.
- Samples gathered.
- Narrative of the investigation.
- The Pesticide Label.
- An index.

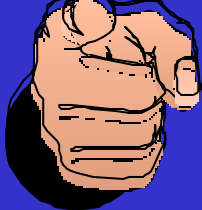


## People data should include -

- Name.
- Address.
- Phone.
- Occupation or relationship to defendants.
- Their statement.
- The testimony they will give.



## Enforcement Guidelines determine the Type of Action



- Re-inspection.
- Office hearing.
- Ag Civil Penalty or S C P.
- Against a license or registration.
- Other Legal Action.

## Exercises

- On the list of evidence, designate whether each item is Enforcement or Worker Health and Safety related, or both.
- On the elements form, list each piece of evidence or document which supports each element.
- Write a brief summary of the violation. What action violated the law?
- Write a brief summary of the episode. What happened?